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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2013-2014

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Estes Oil Company, Inc.

v.

Sam's Real Estate Business Trust, Inc.

Appeal from Lauderdale Circuit Court
(CV-12-0139)

STUART, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala. R. App. P.

Bolin, Parker, Main, and Wise, JJ., concur.

Moore, C.J., and Murdock, Shaw, and Bryan, JJ., dissent.

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MOORE, Chief Justice (dissenting).

Because I believe that the trial court incorrectly construed the agreement the interpretation of which is at issue in this case, I respectfully dissent from affirming its judgment.

I. Facts and Procedural History

In 1991, Wal-Mart Stores, Inc. ("Wal-Mart"), and Estes Oil Company, Inc. ("Estes"), entered into an "Access and Facility Easements" agreement ("the agreement") regarding the use of their adjacent properties in Florence. Wal-Mart's property was termed "Tract 1" in the agreement; Estes's property was termed "Tract 3." Paragraph 11 of the agreement states:

"Competing Businesses. Wal-Mart covenants that as long as Estes or any affiliate of Estes is the user of Tract 3, either as owner or lessee, no portion of Tract 1 shall be leased or occupied by or conveyed to any other party for use as an auto gasoline station."

Wal-Mart built a Sam's Wholesale Club on Tract 1. On October 21, 1996, Sam's Real Estate Business Trust, Inc. ("Sam's REBT"), was organized as a business entity in Delaware. On October 31, 1996, Wal-Mart conveyed Tract 1 by a warranty deed to Sam's REBT, which on March 13, 1997,

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registered to do business as a foreign corporation in Alabama. In 2003, Wal-Mart recorded in Lauderdale County the warranty deed conveying Tract 1 to Sam's REBT. In 2012, Sam's REBT began building a gasoline station on Tract 1. Paragraph 9 of the agreement states: "The rights and obligations contained herein shall run with the title to Tract 1 and Tract 3 and shall bind and insure [sic] to the benefit of the respective successors and assigns of the parties hereto."

Upon discovering that Sam's REBT was building a gasoline station on Tract 1, Estes, which had operated a gasoline station on Tract 3 since 1984, sued Sam's REBT, seeking injunctive relief to halt the construction of the gasoline station. Sam's REBT counterclaimed, seeking a judgment declaring that the agreement did not forbid its construction of a gasoline station on Tract 1. The trial court, treating Sam's REBT as the legal equivalent of Wal-Mart, denied injunctive relief to Estes and entered a summary judgment for Sam's REBT. Estes appeals.

II. Standard of Review

A summary judgment is reviewed de novo, and the judgment is given no presumption of correctness. Baldwin v. Branch, 888

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So. 2d 482, 484 (Ala. 2004). A summary judgment is proper when there is "no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56, Ala. R. Civ. P.

III. Analysis

The dispositive issue is whether Sam's REBT qualifies as "any other party" under paragraph 11 of the agreement. Sam's REBT argues that as a wholly owned subsidiary of Wal-Mart it is not "any other party" but is the same party as Wal-Mart. Thus, it argues, paragraph 11 does not restrict its use of Tract 1. The trial court, agreeing with Sam's REBT, stated in its summary-judgment order:

"While paragraph 11 would appear to prevent an 'other party' from using [Wal-Mart's] property as an 'auto gasoline station,' [Estes] has offered no viable legal or factual argument suggesting that [Sam's REBT] is such an 'other party' or that paragraph 11 has any application to [Sam's REBT's] own use of its property."

However, in its opposition to Sam's REBT's summary-judgment motion, Estes contended that Sam's REBT was an "other party" to the agreement because, it argued, "Sam's is not an original party to the [agreement], Sam's is a freestanding corporate entity, Sam's has not been merged into Wal-Mart or any other

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corporate entity, and it does not claim to be the alter-ego of Wal-Mart."

A party is "[o]ne who takes part in a transaction." Black's Law Dictionary 1231 (9th ed. 2009). In 1996, Sam's REBT took part in a transaction with Wal-Mart, namely the conveyance by a warranty deed of Tract 1 from Wal-Mart to Sam's REBT. The deed was recorded in Lauderdale County in 2003. Sam's REBT is organized as a Delaware business trust and is registered as a foreign corporation in Alabama under its own name. If Sam's REBT were not a separate legal entity from Wal-Mart, how could Wal-Mart convey Tract 1 to Sam's REBT? It can hardly be argued under the law that the conveyance of Tract 1 by a warranty deed was not a transaction between two parties. No legal justification exists for one party to deed to itself property it already owns. Nor, for example, would a lien against Wal-Mart be filed against property in the name of Sam's REBT. Sam's REBT, though a wholly owned subsidiary of Wal-Mart, is nonetheless an "other party" to the agreement between Estes and Wal-Mart and thus also a successor or assignee of Wal-Mart under paragraph 9.

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Had Wal-Mart desired to exclude affiliates or subsidiaries from the scope of the term "any other party" in the agreement, it could have bargained with Estes to add such an exclusion to the agreement and thus protected from the constraints of paragraph 11 any conveyance of Tract 1 to an affiliated entity. However, as the agreement is worded and in accord with common usage of the term "party," Sam's REBT is a stranger to the agreement and thus an "other party" under its terms. "Words used in a contract will be given their ordinary, plain, or natural meaning where nothing appears to show they were used in a different sense or that they have a technical meaning." Ex parte Dan Tucker Auto Sales, Inc., 718 So. 2d 33, 36 (Ala. 1998). See also Strickland v. Rahaim, 549 So. 2d 58, 60 (Ala. 1989) (noting that "the parties [to a contract] are presumed to have intended what the terms clearly state").

IV. Conclusion

Because Sam's REBT is a separate legal entity from Wal-Mart and was not a party to the agreement, it qualifies as an "other party" under paragraph 11 of the agreement. Therefore, I respectfully dissent from affirming the trial court's summary judgment for Sam's REBT.

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MURDOCK, Justice (dissenting).

The covenant at issue was made by Wal-Mart Stores, Inc. ("Wal-Mart"), in favor of Estes Oil Company, Inc. ("Estes"), and it provided that Wal-Mart would not convey the parcel of land at issue to any "other party" for use as a gasoline station. There is no evidence indicating that the parties to this covenant meant anything by the term "other party" except its plain and ordinary meaning.

Sam's Real Estate Business Trust, Inc. ("Sam's REBT"), is not Wal-Mart; it is a separate legal entity. It is not even a wholly owned subsidiary of Wal-Mart. It is a subsidiary of a subsidiary of a subsidiary of Wal-Mart. Thus, one might say that it is indirectly owned and controlled by Wal-Mart. The plain language of the covenant here, however, contains no exception for the conveyance of land to entities indirectly owned or controlled by Wal-Mart. By its plain language, it prevents the conveyance of the property to any "other party" -- any separate legal entity -- for use as a gasoline station.

Wal-Mart has voluntarily used the separate "corporate" form of Sam's REBT to gain tax advantages and/or to insulate itself from potential liabilities. Having voluntarily chosen

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the legal advantages offered by this "corporate veil," Wal-Mart and Sam's REBT may not so readily ignore their separate status merely because it suits their purposes to do so in the immediate controversy. See, e.g., Joyce v. Super Fresh Food Markets, Inc., 815 F.2d 943, 946 (3d Cir. 1987) ("[The defendant] chose to construct a complex corporate family structure. ... This structure has afforded the [defendant corporate] family various tax and labor advantages. ... While we certainly do not begrudge the [defendant corporate] family these fruits, we will not sympathetically listen as they complain of the other consequences."); Mitchell Co. v. Campus, CIV.A.08-0342-KD-C (S.D. Ala. June 17, 2009) (not reported in F. Supp. 2d) ("Even where the directors and officers of one company decided to incorporate a separate company, whatever the motive, they become 'bound by the disadvantages as well as the advantages of separate incorporation.'") (quoting Diesel Sys., Ltd. v. Yip Shing Diesel Eng'g Co., 861 F. Supp. 179, 181 (E.D. N.Y. 1994)). As one authority put it recently, courts view with "disfavor ... contradictory attempts to secure the benefits of the corporate form while at the same time seeking to avoid the disadvantages of same." General

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Nutrition Corp. v. Gardere Wynne Sewell, LLP, 727 F. Supp. 2d 377, 387 n.10 (W.D. Pa. 2010).

For that matter, and the most concerning aspect of our decision today in my opinion, is the ease with which this Court ignores the separate legal status of Wal-Mart and Sam's REBT and thereby acts in a manner inconsistent with our own decisions -- decisions in which we have been careful to observe and to safeguard the separate legal status of a corporation and its shareholders. A substantial showing is necessary to justify ignoring that separate status.

""Piercing the corporate veil is not a power that is lightly exercised. The concept that a corporation is a legal entity existing separate and apart from its shareholders is well settled in this state. Co-Ex Plastics, Inc. v. AlaPak, Inc., 536 So. 2d 37 (Ala. 1988). Alorna Coat Corp. v. Behr, 408 So. 2d 496 (Ala. 1981). The mere fact that a party owns all or a majority of the stock of a corporation does not, of itself, destroy the separate corporate identity. Messick v. Moring, 514 So. 2d 892 (Ala. 1987); Forester & Jerue, Inc. v. Daniels, 409 So. 2d 830 (Ala. 1982).""

Econ Mktg., Inc. v. Leisure Am. Resorts, Inc., 664 So. 2d 869, 870 (Ala. 1994) (quoting Backus v. Watson, 619 So. 2d 1342, 1345 (Ala. 1993), quoting in turn Simmons v. Clark Equip. Credit Corp., 554 So. 2d 398, 400-01 (Ala. 1989) (emphasis added)). Here, there is an absence of any showing by Sam's

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REBT that the corporate veil (actually, veils) between it and Wal-Mart should be pierced. In the absence of such a showing, and given the absence of any evidence of some special meaning of the term "other party" in the covenant, the Court's decision today is at odds with long-established and important precedent respecting the ability of parties to take on separate corporate forms.

Finally, the violation of the restrictive covenant here is a matter that may be the enforced against Sam's REBT because the covenant is a recorded encumbrance and by its terms is binding on the "successors and assigns" of Wal-Mart. See also West Town Plaza Assocs., Ltd. v. Wal-Mart Stores, Inc., 619 So. 2d 1290, 1296 (Ala. 1993) (holding that "[t]he Overlease and the Sublease granted Wal-Mart an easement in land, a property right," entitling Wal-Mart to injunctive relief).

I therefore must respectfully dissent.

Bryan, J., concurs.